IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2688 OF 2006

Ganpat Khanderao Pharande ...Petitioner

V/s.

Suryakant Nathu Pharande & Ors. ...Respondents

Mr.Vijay Killedar for Petitioner.
Mr.A.S. Gadkari APP for State.

CORAM : V.M. KANADE, J.

DATED : 4th AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner.

2. The Petitioner is challenging the order passed by the Judicial Magistrate whereby he was pleased to dismiss the application filed by the Petitioner against the Respondents for the offences punishable U/s.427, 447 r/w 34 of IPC.

3 It is case of the Petitioner that he filed suit before the Civil Judge, Junior Division, Wai, seeking a declaration that the Respondent Nos.1 to 6 did not have a right of way in the Petitioner's land. Learned

counsel for the Petitioner submitted that Civil Court decreed his suit. He submitted that, however, Executive Magistrate, Wai passed an order holding that the Respondents No.1 to 6 have a right of way through the Petitioner's land and as a result of said order, said Respondents started using the land. The Petitioner filed complaint of criminal trespass against the Respondent Nos.1 to 12. The learned Magistrate dismissed the complaint on the ground that as order was passed by the Magistrate permitting the Respondent No.1 to 6 to use the said land, no offence of criminal trespass was committed by Respondent No.1 to 12. Learned counsel for the Petitioner submitted that the Revenue Authority did not have jurisdiction to pass the impugned order of granting access to the Respondent No.1 to 6 through the land of Petitioner, particularly when Civil Court had passed a decree in favour of the Petitioner. He submitted that, therefore, a criminal complaint was filed against the Respondent No.1 to 6 and 7 to 12 who were officers in police department were party to the Criminal trespass.

4. It is not possible to accept the submissions made by learned

counsel for the Petitioner. It is open for the Petitioner to challenge the order passed by the Revenue Court and if the said application is set aside and even thereafter, the Respondents continue to use the said land, then possibly, the Petitioner would be in a position to file an a complaint of criminal trespass. However, since order passed by the Executive Magistrate is not set aside, no offence of criminal trespass, obviously, has been committed by the Respondents. Hence, there is no reason to interfere with impugned order while exercising writ jurisdiction under Article 227 of Constitution of India. Writ Petition is dismissed, accordingly.

V.M. KANADE, J.